Antonio Chavez-Aguilar
Reg. No. 15005-198
Federal Correctional Complex (Low)
Post Office Box 9000
Forrest City, Arkansas 72336-9000,

in pro. per.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ANTONIO CHAVEZ-AGUILAR, Defendant.	'08 CV 0720-BEN Case No. 88-0723-01-BEN

DEFENDANT' MOTION FOR A REDUCTION OF SENTENCE PURSUANT TO THE PROVISIONS OF 18 U..C. §3582(c)(2)

COMES NOW ANTONIO CHAVEZ-AGUILAR, in pro per, and moves the Court pursuant to the provisions of 18 U.S.C. §3582(c)(2) to reduce the sentence imposed in this cause pursuant to a conviction by a jury on May 3, 1990 following Defendant's arrest on September 1, 1988, The sentence of 324 months, 27 years, was imposed in the case. Defendant shows this Court as follows:

1. Defendant was 22 years of age at the time he was sentenced to a term of 324 months of imprisonment. Defendant had been convicted of Counts 2, 5, and Counts 9-15 of a 19 count indictment. Defendant was represented by Lynn H. Ball pursuant to an appointment under the Criminal Justice Act, as Defendant did not have the means to employ his own attorney.

2. Count 2 of the indictment charged a violation of 21 U.S.C. §846, conspiracy to possess heroin with intent to distribute it.

Counts Five and Counts 9 through 14 charged violations of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2, possession of heroin with intent to distribute and aiding and abetting. Count 15 charged possession of heroin with intent to distribute, but this Count charged a Class A felony, whereas the other counts charged a Class B felony.

The maximum penalty for couts 2 and 15 was 10 years to life, whereas the sentence on Counts 5, 9, 12 and 14 were offenses under 21 U.S.C. §841(b)(1)(B), that carried a 5 year minimum sentence and a 40-year maximum sentence. Counts 10 11, and 13 carried no mandatory minimum, and a maximum sentence of 20 years under 21 U.S.C. §841(b)(1)(C).

3. Defendant's only other criminal history was at age 18, when he was convicted for possession of a switchblade knife, for which he received a fine of $400, and 3 years of unsupervised probation. He was assessed one point for the prior conviction, but at the time he was involved in the instant offense, he was on unsupervised probation, so an additional 2 points was added, giving him three criminal history points under the sentencing guidelines as those guidelines then existed.

4. Although the Defendant was sentenced as a major drug offender, it must be noted that at the time of his arrest, his total assets were an item of jewely valued at $300.00 and a 1974 Chevrolet. a 14 year old vehicle, and as noted above, lacked the resources to obtain his own counsel.

5. Since the date of the imposition of the sentence upon the Defendant, numerous changes have occurred in the Sentencing Guidelines, including a change in the manner in which the criminal history is calculated, a change in the guidelines regarding the maximum severity based upon drug quantity alone. Additionally, the Supreme Court has

made significant changes in the sentencing practices of the district courts following its decisions in Blakely v. Wasgington, 542 U.S. 296 (2004) and United States v. Booker, 543 U.S. 220 (2005). Recently, the Supreme Court decided both Kimbrough v. United States , 552 U.S. ___ (2007) and Gall v. United States, 552 U.S. ___ (2007). These cases have made it abundantly clear that the district court possesses the sentencing discretion to tailor an individualized sentence for a defendant, in accordance with the statutory requirements of 18 U.S.C. §3553(a).

6. At the time the Defendant was sentenced, the Court did not recognize it had the authority to make adjustments in the Guideline Sentence so as to individualize the sentence. Rather, at the time the Defendant was sentenced, the Guidelines were regarded as mandatory by virtue of the provisions of 18 U.S.C. §3553(b). Further, the Courts were permitted to make factual findings which served to increase the sentence to which the Defendant was exposed. Following the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and its progeny, Blakely v. Washington, 542 U.S. 296 (2004), and United State, 543 U.S. 220 (2005), district courts were given the freedom to individualize the sentence that was imposed, in keeping with the sentencing objectives articulated in 18 U.S.C. §3553(a). However, it took two more Supreme Court cases, Kimbrough and Gall, to truly convince the Courts of Appeal that the district court had the authority to individualize the sentencing process. However, as of this time, these cases have not been made retroactive to cases, such as this one.

7. Since the passage of the Sentencing Reform Act of 1984, a sentence, once imposed, could not be changed, unless an event occurred

as set forth in 18 U.S.C. §3582(c). See §3582(b)(1).

8. 18 U.S.C. §3582(c)(1)(A) is also authority for the Court to amend the originally imposed sentence by reducing the original sentence. That section authorizes the to modify a term of imprisonment previously imposed where the Bureau of Prisons makes the motion, without regard to any guideline changes. While that provision has been a part of the Sentencing Reform Act, it was not implemented until November 1, 2006, when the United States Sentencing Commission first implemented the provision.

9. This Court should consider reducing the sentence imposed upon the defendant almost two decades ago, at a time when the defendant was 20 years of age. Prior to the defendant's involvement in this case, he had no involvement with drugs. The Court may recall from a review of the files , that defendant's counsel had filed a motion seeking to dismiss the indictment due to outrageous government conduct. That motion outlined a course of conduct by federal agents that had the effect of creating a conspiracy to import heroin where none had, in fact, existed before the agents' activity to create a conspiracy. Movant, at the time, was a 20-year-old young man, who was working to support his wife and infant child by washing dishes. He was steadily and gainfully employed and continued to be so employed despite activity by government agents to induce him to become involved in heroine. Defendant did become involved in the activity which, ultimately, led to a 324-month sentence.

10. In the nearly two decades of incarceration, defendant has complied an excellent record of achievements which imprisoned. He has been an excellent worker who has been dependable, and has received high

marks for his industriousness and initiative.

11. The Ninth Circuit Court of Appeals, in affirming the defendant's conviction and sentence on December 12, 1991, noted the sentence imposed was "very harsh," even though it affirmed the conviction and sentence. Defendant, in spite of his youth at the time, was ascribed the role of "leader/organizer" for which he received an enhancement of 4 points, which together with a two-point enhancement for obstruction of justice, and the remainder from the quantity of drugs ascribed to him. Further, defendant did not receive an award for acceptance of responsibility, all of which resulted in an offense level sufficient to impose a 324 month sentence on a 20-year old defendant.

12. The sentence that was imposed was a sentence of 27 years, which must be served in its entirity, less 54 days of good time awarded for good conduct during the previous year. Defendant's crime was not a violent offense. Instead, it was commenced when defendant was 19 years old, at a time when he had no formal education, spoke very little English, yet was working as a dish washer to support himself, his common-law wife and their child.

13. much of the drug quantity attributed to the defendant was determined, not by a jury, but by judge-found facts. As a consequence, much of the driving force for the lengthy sentence in this case was based on judge-fond facts. At the time the defendant's sentence was affirmed by the Ninth Circuit Court of Appeals, the Supreme Court's holding in Apprendi v. New Jersey was about nine years in the future. The drug quantity and role in the offense both served to make for a very harsh sentence.

14. The harshness of the sentence is further amplified by the fact that the U.S. Probation Office had recommended a total offense level of 37, with a criminal history category of II, which would have provided a guideline range of from 235 to 293 months. Joe Portillo, a Senior U.S. Probation Officer wrote, "Therefore, giving mind to the context of the offense, and the circumstances surrounding these events as well as the defendant's relative youth, a sentence as indicated above [235 months] seems appropriate under the guidelines." The Court, though, imposed a sentence of 327 months.

15. The sentence that was imposed on defendant was, as noted above, based on judge-found facts which served to significantly increase the sentence from the 235-month recommendation to the sentence that was actually imposed, 327 months, or an upward departure of 102 months. Such an increase would not have passed constitutional muster after the Supreme Court's holding in Blakely v. Washington. However, neitherApprendi, Blakely, nor Booker provide an independent basis for this Court to review the sentence at this stage. But the recent promulgation by the United States Sentencing Commission which implemented the provisions of 18 U.S.C. §3582(c)(1) does provide this Court with an independent basis on which to review the defendant's sentence.

16. This Court should review the sentence in this case under its authority to review a sentence for extraordinary and compelling reasons, and consider reducing the sentence imposed in this case in view of the significant progress made by the Defendant in achieving rehabilitation. The reduction of the sentence would be appropriate, when considered in light of 18 U.S.C. §3553's admonition not to impose a sentence any longer than necessary to achieve that section's sentencing objectives.

17. 18 U.S.C. §3553 adminishes the court to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in §3553(a)(2). The Court, in imposing a sentence of 327 months, imposed a sentence longer than necessary to achieve the sentencing objectives of 18 U.S.C. §3553(a)(2). The length of time that the defendant has already served, meets the requirements of §3553(a)(2)(A), which requires the Court to imposed a sentence that adequately reflects the seriousness of the offense, to promote the respect for the law, and to provide just punishment for the offense. Likewise, the sentence must afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18. The defendant has already achieved all of the sentencing objectives specified by 18 U.S.C. §3553(c)(2). Consequently, this Court should enter its Order reducing the sentence to permit the defendant to be released from confinement at the earliest practicable moment.

WHEREFORE, for the foregoing reasons, defendant prays an order of this Court reducing the sentence in the captioned case from 327 months to 240 months, and ordering the defendant's immediate release from confinement.

Respectfully submitted,

Chavez-A

Antonio Chavez-Aguilar
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Defendant, pro se

CERTIFICATE OF SERVICE

This is to certify the undersigned did mail a full, true, and correct copy of the foregoing

DEFENDANT'S MOTION FOR A REDUCTION OF SENTENCE PURSUANT TO THE PROVISIONS OF 18 U.S.C. §3582(c)(2)

to:

United States Attorney
Southern District of California
880 Front Street
Room 6293
San Diego, California 92101-8900

by first-class mail, in a wrapper addressed as aforesaid, with sufficient first-class postage prepaid and affixed thereto, and by depositing the same in the mail receptacle provided for inmate use in mailing legal materials from the Federal Correctional Complex (Low) at Forrest City, Arkansas, on this 16th day of April, 2008.

Chávez A.
Antonio Chavez-Aguilar

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Antonio Chavez-Aguilar

DEFENDANTS

United States of America

08 CV 0720 JLS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF St. Francis
(EXCEPT IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pro Se
Reg. No. 15005-198, Federal Correctional Complex (Low)
Post Office Box 9000
Forrest City, Arkansas 72336-9000

ATTORNEYS (IF KNOWN)

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐1 U.S. Government Plaintiff
- ☐3 Federal Question (U.S. Government Not a Party)
- ☒2 U.S. Government Defendant
- ☐4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

18 U.S.C. 3582

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury-Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☒ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒1 Original Proceeding ☐2 Removal from State Court ☐3 Remanded from Appelate Court ☐4 Reinstated or Reopened ☐5 Transferred from another district (specify) ☐6 Multidistrict Litigation ☐7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Benitez Docket Number 88cr723BEN

DATE 4/18/2008

SIGNATURE OF ATTORNEY OF RECORD

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